

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOY TUCKER and U.S. POSTAL SERVICE,
POST OFFICE, Tulsa, Okla.

*Docket No. 97-2173; Submitted on the Record;
Issued April 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for a schedule award; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for a schedule award.

Appellant filed a claim alleging on January 7, 1996 she injured her back in the performance of duty. The Office accepted appellant's claim for lumbar strain. Appellant filed a claim for compensation requesting a schedule award. By decision dated December 4, 1996, the Office denied appellant's claim noting that the Federal Employees' Compensation Act did not provide for a schedule award for permanent impairment of the spine. Appellant requested reconsideration on February 21, 1997. By decision dated May 27, 1997, the Office found that appellant's request did not warrant review of the merits of her claim.

. A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back, no claimant is entitled to such an award.¹

In this case, appellant's attending physician, Dr. Mark A. Hayes, a Board-certified orthopedic surgeon, completed a report on February 27, 1996 diagnosing low back strain. He provided a history of injury, medical history and physical findings regarding appellant's spinal range of motion. Dr. Hayes recommended lighter duty and stated that appellant's condition warranted an impairment rating of five percent due to limited mobility.

¹ *George E. Williams*, 44 ECAB 530, 533 (1993).

As the only range of motion figures mentioned relate to appellant's spine, Dr. Hayes appears to be attributing appellant's permanent impairment rating to loss of range of motion of her spine. As noted above, the Act does not provide for a schedule award for permanent impairment of the spine and appellant is not entitled to such. Furthermore, there is no indication in the medical evidence that appellant's back condition has caused impairment of her extremities or other covered member. As the medical evidence does not establish a permanent impairment of a scheduled member, the Office properly denied appellant's claim for a schedule award.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³

Appellant, through her representative, requested reconsideration on February 21, 1997. Appellant's representative argued that appellant was entitled to wage-loss compensation and attempted to submit additional evidence regarding her disability for work. Appellant filed a claim for compensation on June 2, 1997 indicating that she stopped work on May 10, 1996. The Office has not issued a final decision regarding appellant's entitlement to compensation for wage loss.⁴ As the Office did not issue a final decision⁵ regarding appellant's claim for wage-loss compensation, the Board may not address it for the first time on appeal.

The evidence submitted in support of appellant's request for reconsideration is not sufficient to require the Office to reopen her claim for consideration of the merits of a schedule award. In support of her reconsideration request, appellant submitted a report from a rehabilitation specialist regarding her ability to work and earn wages. This report is not relevant to the issue for which the Office denied appellant's claim, the lack of medical evidence establishing a permanent impairment to a scheduled member entitling her to a schedule award.

² 20 C.F.R. § 10.138(b)(1).

³ 20 C.F.R. § 10.138(b)(2).

⁴ The Office did provide appellant with a statement on May 17, 1996 indicating that she was not entitled to compensation from March 1 to April 1, 1996 as she was working. Appellant did not request a final decision on this issue and did not submit additional claims for compensation.

⁵ 20 C.F.R. § 501.2(c).

The decisions of the Office of Workers' Compensation Programs dated May 27, 1997 and December 4, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 22, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member